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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

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6 JAVIER CABRERA, *et al.*,
7 Plaintiffs,

8 v.

9 SERVICE EMPLOYEES INTERNATIONAL
10 UNION, *et al.*,
11 Defendants.

Case No. 2:18-cv-00304-RFB-DJA

ORDER

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13 Presently before the Court is Defendants' Motion for Protective Order (ECF No. 73), filed
14 on September 23, 2019. Plaintiffs filed a Response (ECF No. 74) on October 7, 2019 and
15 Defendants filed a Reply (ECF No. 75) on October 15, 2019.

16 Also before the Court is Plaintiffs' Motion to Extend Discovery (ECF No. 76) filed on
17 October 16, 2019, to which Defendants filed a Response (ECF No. 77) on October 18, 2019 and
18 Plaintiffs filed a Reply (ECF No. 83) on October 25, 2019.

19 Also before the Court is Defendants' Emergency Motion for a Stay of Scheduled
20 Depositions Pending Resolution of Motion for Protective Order (ECF No. 78), filed on October
21 23, 2019. On October 23, 2019, the Court granted Defendants' request to decide the Motion on
22 an expedited basis. (ECF No. 79). On October 24, 2019, Plaintiffs filed a Response (ECF No.
23 80). On October 25, 2019, Defendants filed a Reply (ECF No. 81) and Plaintiffs filed a Motion
24 to Strike the Reply (ECF No. 82).

25 **I. BACKGROUND**

26 The parties are familiar with the facts of this matter and the Court will only summarize
27 them as necessary. Defendants' Motion for Protective Order (ECF No. 73) is pending before the
28 Court regarding discovery into the 13-15 causes of action of the First Amended Complaint. They

1 seek an order to protect them from written discovery on topics related to the 13-15 causes, which
2 they claim are barred by claim splitting. Plaintiffs respond that the claim splitting argument is not
3 a basis for the imposition of a protective order as Plaintiff Mancini's claims in another action
4 have been dismissed. (ECF No. 74). Defendants reply that their pending Motions to Dismiss
5 (ECF Nos. 36 and 38) set forth the reasons why the claim splitting doctrine applies to bar 13-15
6 causes of action and therefore, discovery into these claims that are the same as those previously
7 alleged in another case should be barred. (ECF No. 75).

8 Until a decision is issued on Motion for Protective Order, Defendants seek of stay of 6
9 scheduled depositions set for November 1-6, 2019 as Plaintiffs' counsel has indicated that he
10 intends to question the deponents on the topics that are subject to the Motion for Protective Order.
11 (ECF No. 78). Plaintiffs oppose the stay given the prior history of this case, including Judge
12 Boulware's comments at a February 22, 2019 hearing. (ECF No. 26). Plaintiffs highlight that
13 Judge Gordon denied Defendants' request to consolidate this case with *Garcia et al v. SEIU et al.*,
14 Case No. 2:17-cv-1340-APG-NJK, which is now closed. Defendants reply that three more
15 depositions have been noticed for November 6-7, 2019. (ECF No. 81). Plaintiffs seek to strike
16 Defendants' reply brief as the Court did not request a reply brief. (ECF No. 82).

17 Plaintiffs also seek to extend discovery as Defendants have not responded to Plaintiffs'
18 written discovery regarding the 13-15 causes of action and depositions have been noticed. (ECF
19 No. 76). In doing so, Plaintiffs request only three deadlines be extended – discovery cutoff,
20 dispositive motions, and joint pretrial order – by two months. (*Id.*). Defendants respond that no
21 extension is necessary if the Motion for Protective Order (ECF No. 73) is granted because the
22 depositions at issue could be conducted outside of the close of discovery. (ECF No. 77).
23 Plaintiffs reply that they need additional time to receive the requested written discovery and
24 conduct the depositions as Defendants have refused to provide information regarding the alleged
25 claim-splitting issues that are disputed. (ECF No. 83).

26 **II. DISCUSSION**

27 Federal Rule of Civil Procedure 26(b)(1) provides for broad and liberal discovery.
28 “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s

1 claim or defense.” *Id.* However, a court may limit discovery via Rule 26(c), which permits the
2 court to issue a protective order to protect a party or person from annoyance, embarrassment,
3 oppression, or undue burden or expense when the party establishes good cause. For good cause
4 to exist, the party seeking protection bears the burden of showing specific prejudice or harm will
5 result if no protective order is granted. *See Beckman Indus., Inc., v. Int’l. Ins. Co.*, 966 F.2d 470,
6 476 (9th Cir. 1992). Rule 26(c) requires more than “broad allegations of harm, unsubstantiated
7 by specific examples or articulated reasoning.” *Id.*; *see also Foltz v. State Farm*, 331 F.3d 1122,
8 1130 (9th Cir. 2003) (*citing San Jose Mercury News, Inc., v. District Court*, 187 F.3d 1096, 1102
9 (9th Cir. 1999) (holding that the party must make a particularized showing of good cause)). The
10 Supreme Court has interpreted the language of Rule 26(c) as conferring “broad discretion on the
11 trial court to decide when a protective order is appropriate and what degree of protection is
12 required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984). Additionally, the Supreme
13 Court has acknowledged that the “trial court is in the best position to weigh fairly the competing
14 needs and interests of the parties affected by discovery. The unique character of the discovery
15 process requires that the trial court have substantial latitude to fashion protective orders.” *Id.*

16 In deciding whether to grant a stay of discovery, the Court is guided by the objectives of
17 Rule 1 to ensure a just, speedy, and inexpensive determination of every action. *See Kidneigh v.*
18 *Tournament One Corp.*, 2013 WL 1855764, at *2 (D. Nev. May 1, 2013). “The Federal Rules of
19 Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially
20 dispositive motion is pending.” *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 600 (D. Nev.
21 2011). However, preliminary issues such as jurisdiction, venue, or immunity are common
22 situations that may justify a stay. *See Twin City Fire Ins. v. Employers of Wausau*, 124 F.R.D.
23 653 (D. Nev. 1989); *see also Kabo Tools Co. v. Porauto Indus. Co.*, 2013 WL 5947138, at *1 (D.
24 Nev. Oct. 31, 2013) (granting stay based on alleged lack of personal jurisdiction); *Ministerio*
25 *Roca Solida v. U.S. Dep’t of Fish & Wildlife*, 288 F.R.D. 500, 506 (D. Nev. 2013) (granting stay
26 based in part on alleged lack of subject matter jurisdiction). Further, motions to stay discovery
27 pending resolution of a dispositive motion may be granted when: (1) the pending motion is
28 potentially dispositive; (2) the potentially dispositive motion can be decided without additional

1 discovery; and (3) the Court has taken a “preliminary peek” at the merits of the potentially
2 dispositive motion to evaluate the likelihood of dismissal. *See Kor Media Group, LLC v. Green*,
3 294 F.R.D. 579, 581 (D. Nev. 2013).

4 A party seeking to stay discovery pending resolution of a potentially dispositive motion
5 bears the heavy burden of establishing that discovery should be stayed. *See, e.g., Turner*
6 *Broadcasting System, Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997) (noting that a
7 stay of discovery may be appropriate where the complaint was “utterly frivolous, or filed merely
8 for settlement value.”); *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). When
9 deciding whether to issue a stay, a court must take a “preliminary peek” at the merits of the
10 dispositive motion pending in the case. *Tradebay*, 278 F.R.D. at 602-603. In doing so, a court
11 must consider whether the pending motion is potentially dispositive of the entire case, and
12 whether that motion can be decided without additional discovery. *Id.* This “preliminary peek” is
13 not intended to prejudge the outcome, but to evaluate the propriety of a stay of discovery “with
14 the goal of accomplishing the objectives of Rule 1.” *Id.* (citation omitted). That discovery may
15 involve inconvenience and expense is not sufficient, standing alone, to support a stay of
16 discovery. *Turner Broadcasting*, 175 F.R.D. at 556. An overly lenient standard for granting
17 requests to stay would result in unnecessary delay in many cases.

18 Preliminarily, Defendants’ request for a protective order is actually a request for a stay of
19 discovery until their Motions to Dismiss (ECF Nos. 36 and 38) are decided. Specifically,
20 Defendants seek to avoid answering written discovery and deposition questions on any topics
21 related to Plaintiffs’ causes of action 13-15, which related to Plaintiff Mancini’s claims regarding
22 processing of internal union charges, report and recommendations of the Hearing Officer, and
23 amendment of the Local 1107 Constitution. The Court has carefully weighed Defendants’
24 request and finds that they have not carried their burden to justify a stay of discovery or protective
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1 order. After taking a preliminary peek at the pending motions to dismiss, the oppositions, and
2 replies, the Court is not persuaded that they will be successful.¹

3 The linchpin of Defendants' Motions to Dismiss is the claim splitting doctrine, which bars
4 a party from subsequent, duplicative litigation where the "same controversy" exists. *See, e.g.,*
5 *Single Chip Sys. Corp. v. Intermec IP Corp.*, 495 F.Supp.2d 1052, 1057 (S.D. Cal. 2007). Here,
6 the instant case is the later-filed action and to determine if it is duplicative of the *Garcia* action
7 such that improper claim-splitting has occurred, the Court applies the transaction test:

8 (1) whether rights or interests established in the prior judgment would be destroyed
9 or impaired by prosecution of the second action; (2) whether substantially the same
10 evidence is presented in the two actions; (3) whether the two suits involve
infringement of the same right; and (4) whether the two suits arise out of the same
transactional nucleus of facts.

11 *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1202 (9th Cir. 1982). The fourth factor is
12 generally the most significant one to be considered by the Court. *See, e.g., Mpooyo v. Litton*
13 *Electro-Optical Sys.*, 430 F.3d 985, 988 (9th Cir. 2005).

14 Plaintiffs concede that Defendants can likely meet the second element of the analysis
15 because the same evidence may be presented in both cases. (ECF No. 74, 6:23-24). However,
16 Plaintiffs argue that the remaining elements cannot be met because there is anti-preemption
17 provision in LMRDA that preserves state law causes of action, different rights and remedies are
18 raised by Plaintiff Mancini in this action versus the injunctive and declaratory relief sought in the
19 *Garcia* action, the 15th cause of action involves 2019 actions of Defendants that occurred after the
20 allegations raised in *Garcia*. (ECF No. 74). Plaintiffs also contend that numerous exceptions to
21 the claim splitting doctrine apply. (*Id.*). Defendants argue that the 13-15 causes of action are the
22 same as those asserted in the *Garcia* action and take issue with Plaintiffs' assertion that an
23 exception to the claim splitting doctrine applies. (ECF No. 75). Having fully considered the
24 parties' arguments, the Court is not convinced that application of the transaction results in a
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28 ¹ The Court notes that its view of the claim splitting argument may be different from how the
assigned district judge will see the argument.

1 finding that improper claim-splitting has occurred and thus, it is not clear that Defendants
2 Motions to Dismiss will be granted.

3 Additionally, the Court considered that the issues before the Court in the pending Motions
4 to Dismiss do not require further discovery as they have been fully briefed. However, the issues
5 in the pending motions to dismiss are not potentially dispositive of the entire case. Therefore, the
6 Court finds that a temporary stay of discovery on these issues will not further the goal of judicial
7 economy. Accordingly, the Defendants shall have 14 days to respond to the written discovery
8 regarding the 13-15 causes of action and the scheduled depositions for November 1-7, 2019 shall
9 go forward as scheduled with questions regarding the 13-15 causes of action permitted.

10 As for the other pending motions, the Court will deny Defendants' Motion for a Stay of
11 Scheduled Depositions Pending Resolution of Motion for Protective Order (ECF No. 78). As the
12 Court has addressed the underlying Motion for Protective Order that was the basis for
13 Defendants' emergency motion, it finds no reason to grant a stay. The Court will also deny
14 Plaintiffs' Motion to Strike the Reply (ECF No. 82). Although the Court's Order (ECF No. 79)
15 did not permit a reply brief, the Court will permit Defendants' Reply (ECF No. 81) to be
16 considered. It added in new information of additional depositions that would be subject to the
17 Motion and as such, the Court finds it appropriate to consider.

18 However, the Court will grant Plaintiffs' Motion to Extend Discovery (ECF No. 76) in
19 order to permit the written discovery on 13-15 causes of action and scheduled depositions to be
20 completed. As such, the following schedule shall govern discovery:

- 21 • Discovery cutoff: January 9, 2020
- 22 • Dispositive motions: February 10, 2020
- 23 • Joint pretrial order: March 9, 2020 or to the extent dispositive motions are filed, 30
24 days after a decision on those motions or further court order

25 **III. CONCLUSION**

26 **IT IS HEREBY ORDERED** that Defendants' Motion for Protective Order (ECF No. 73)
27 is **denied**.

1 **IT IS FURTHER ORDERED** that Defendants' Motion for a Stay of Scheduled
2 Depositions Pending Resolution of Motion for Protective Order (ECF No. 78) is **denied**.

3 **IT IS FURTHER ORDERED** that Plaintiffs' Motion to Extend Discovery (ECF No. 76)
4 is **granted**.

5 **IT IS FURTHER ORDERED** that Plaintiffs' Motion to Strike the Reply (ECF No. 82) is
6 **denied**.

7 DATED: October 29, 2019.



DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE